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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,857	10/27/2003	James D. Krol	6159	9239
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EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
11/10/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/692,857

Applicant(s)

KROL, JAMES D.

Examiner

Lien T. Tran

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-14 and 22-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-14 and 22-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Upon further consideration, 112 first paragraph rejection of claims 1-15 is hereby withdrawn. Claims 1-10 are cancelled in the amendment filed 7/13/09. With respect to claim 11, the specification discloses ingredients such as meat, vegetable and fruit are optional.

Claim 31 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

A pizza having the structure and arrangement in claim 31 is not disclosed in the specification or the original claims. There is no disclosure of depositing a cheese layer on top of a base layer consisting essentially of flour and cheese. Page 15 of the specification discloses putting flour on a baking pan and then distributing cheese over the flour. There is no disclosure of placing cheese over a base layer containing cheese and flour.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, the phrase "non-liquid ingredients" is indefinite because it is not known what would be considered as "non-liquid ingredients". It is not clear what is excluded or included from such phrase and the specification does not define what will constitute "non-liquid ingredients". The specification discloses the base layer

comprises vegetables and fruits which are known to contain water; thus, it is not clear what is intended by " non-liquid food ingredients".

Claim 14 has the same problem as claim 11.

The 112 second paragraph rejection is maintained for the phrase " non-liquid ingredients". In the response filed 7/13/09, applicant gives the definition of liquid and argues vegetables and fruits are clearly not a liquid. This argument is not persuasive. The rejection does not question the definition of " liquid"; the rejection is based on the term " non-liquid ingredients". Applicant is not claiming the three states of matter. It is not clear what applicant intends by "non-liquid ingredients" and the specification does not give any insight into what non-liquid ingredients constitute. Clearly, many of the ingredients disclosed to be in the base layers contains moisture. For example, vegetable, fruit, fish, contain moisture; thus, they cannot be considered as non-liquid ingredients. Thus, the claims are indefinite because it is not clear what is excluded or included in the ingredients to be considered non-liquid ingredients. Applicant points out that vegetables and fruits are not a liquid. The relevancy of this point to the issue in the rejection is not understood. The claims do not contain limitation of solid or liquid. Non-liquid ingredients are not the same as liquid.

Claims 11-14, 22-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article of recipes for " Crustless Pizza" in view of the Google Group disclosure.

The recipe for Deep Dish Pizza teaches sprinkling shredded cheese over the bottom of dish, spreading on pizza sauce, sprinkling mozzarella, piling on topping and baked until bubble and brown. The pizza is allowed to stand for 10 minutes before

cutting. The article also disclose crustless pizza made by forming a base layers of zucchini or spaghetti squash mixed with eggs and mozzarella cheese, spreading tomato sauce on top of the base layer, adding additional topping layers and baking the pizza for 25 minutes.

The recipe does not teach forming a mixture of high gluten flour and baking powder, the baking temperature as claimed, freezing, thawing and reheating.

The disclosure on April 1, 2003 shows that it is known to make low carbohydrate crust using a little flour and some whey protein.

With regard to new claims 27-36, the language "consisting essentially of" does not define over the prior art. MPEP section 2111.03 states that "for the purposes of searching for and applying prior art under 102/103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising". For the Deep Dish Pizza, the base layer is formed by sprinkling cheese; in view of the Google disclosure, flour is added to the cheese which constitutes a base layer of cheese and flour. With regard to the Low Carb Pizza, the base layer is formed by mixing squash, eggs and cheese. There is not indication that the additional ingredient of egg and squash materially affects the claimed product as the specification discloses additional materials can be added to the base layer including moisture containing ingredients such as fruit, vegetable, fish etc.. As to the carbohydrate content, the pizza does not contain the traditional crust and the flour added is very little, it is expected the carbohydrate content is not as in traditional pizza and is in the range as claimed. It would have been

obvious to one skilled in the art to vary the ingredients to adjust the carbohydrate content to the level desired. It is known in the art to make low carbohydrate pizza by making low carbohydrate crust using little flour and whey protein. It would have been obvious to one skilled in the art to add flour and protein to the crust when making the Deep Dish Pizza to obtain different texture and flavor. The pizza is still low in carbohydrate because only little flour is used; the precise little amount of flour can vary depending on the taste, texture and amount of carbohydrate desired. As to the limitation of the base layer of non-liquid ingredients, it is unclear as explained in the 112 rejection what the limitation means. As far as the art rejection is concerned, the new limitation does not define over the prior art. The article teaches one recipe in which the cheese is sprinkle over the bottom of the dish; this is a base layer or the crust. If the little flour and protein is added, it would have been obvious to one skilled in the art to add it to the cheese because the discussion teaches to prepare a crust with the little flour and protein. The egg mixture is poured over the cheese; thus, it is an additional layer which is not excluded by the claim. Furthermore, even if the egg mixture is part of the cheese layer, the claims still do not define over the prior art. It is not clear what is excluded by the language " non-liquid ingredients". Egg is not water or milk so it can be considered as non-liquid ingredients. The specification and claim¹⁴ recite the base layer comprises additional ingredients including vegetables and fruits; both fruits and vegetables contain water; thus, the base layer is interpreted to exclude pure liquid sources such as water. Also, the article teaches a recipe in which the base is made by mixing vegetable with cheese and egg. The moisture is squeezed out of the vegetable.

Thus, the base is the same as claimed the claimed base layer does not exclude the egg component. It would have been obvious to use high gluten flour because such flour is well known in the art and its use further reduces the carbohydrate content and is equivalent to the use of flour in combination with protein as taught in the prior art because high gluten flour has a higher protein content than regular flour. It would have been obvious to add baking powder to create bubbling appearance or to give little rising to make a firm structure. This is well known in the art as it is common to add baking powder to product containing flour. It would have been obvious to make up a batch of flour for use in multiple times; this would have been a matter of preference. It would have been obvious to select specific amount of flour depending on the carbohydrate content wanted. Since little flour is used, it is obvious the flour can be as little as 1 teaspoon; the amount used can vary depending on parameters such as carbohydrate content, taste, texture, flavor etc... It would have been obvious to use double acting baking powder when one wants a faster reaction. It would have been obvious to use higher temperature for shorter period of time. It would have been obvious to freeze the product for long term storage. When the product is frozen, it would have been obvious to thaw and reheat it to prepare the product for consumption. As to the language "consisting essentially of" in claim 16, the transitional language "consisting essentially of" is construed as equivalent to "comprising" absent a clear indication in the specification or claims of what the basic and novel characteristics actually are (see MPEP 2111.03). Furthermore, the prior art teaches essentially the same steps as claimed. When a little flour and protein is used in the base layer of the crustless pizza,

it would have been obvious to one from the dry mixture of the flour. The recipe teaches to spread the cheese or the vegetable/cheese mixture onto a cooking pan. When the flour is used, it would have been obvious to spread the flour onto the pan because the discussion teaches to use the flour in the crust. It would have been obvious to put the cheese first or flour first as an obvious matter of preference because both will be mixed together during baking to form a layer. The recipes teach to add additional layers and then baking for suitable time and temperature. Thus, the prior art teaches the steps of claims 16 and 22.

On page 18 of the response, applicant comments the examiner does not apply the references to each of the rejected claims and make conclusory statements. While making this statement, applicant does not specifically points to the claims where limitations are not addressed. The rejection explains clearly how the references are combined and the limitations in the claims are addressed. On page 20 of the response, applicant argues the base layer of the deep dish pizza comprises Italian cheese and the liquid mixture of cream cheese, eggs, cream, parmesan and spices. The examiner respectfully disagrees with applicant. The recipe teaches to sprinkle the cheese over the bottom of the dish and pour the egg mixture over the cheese layer. Thus, the cheese layer is the base layer because it is at the bottom and the egg mixture is an additional layer on top of the cheese layer. On page 21 of the response, applicant comments the examiner does not apply the Low Carb Pizza in the rejection. The basis of this statement is not clear. The rejection recites the teaching of the recipe for Low Carb Pizza and addresses this prior art in the rejection. With respect to the Google

group disclosure, applicant argues the reference teaches a conventional pizza crust that uses among other things a little flour and some whey protein. The examiner respectfully disagrees. The Google disclosure does not disclose a conventional pizza crust that uses little flour and whey protein in addition to other things. The reference discloses "there are recipes for low carb crust that use a little flour and some whey protein". This is not a disclosure of conventional pizza crust. A 103 rejection must take into consideration the level of skill of one in the art. If the recipe is for low carb pizza crust, it would have been readily apparent to one skilled in the art to use very little flour because flour is the main source of carbohydrate in pizza crust. This is particularly obvious in combination with the teaching of using cheese or cheese, vegetable and egg for the crust. The flour is used for a little texture; it is not used to form the crust as in conventional pizza crust. On page 22, applicant again sets forth the base layers of the Deep Dish Pizza and the Low Carb Pizza. The issue with the Deep Dish Pizza is already addressed above. With regard to the Low Carb Pizza, the claims do not exclude the egg and the squash and the specification has shown that these components materially affect the claimed product as applicant claims and discloses additional components including fish, fruit, vegetables, meat etc... are added to the base layer mixture. On page 26, applicant argues the combination of reference does not teach the steps of claim 22. This argument is not persuasive. The Deep Dish pizza teaches to form a base by sprinkling cheese onto the baking pan. The Google disclosure teaches to form a crust using little flour and whey protein. Thus, when flour is added to the crust of the Deep Dish pizza, it would have been obvious to it to the

base layer of cheese because that is the crust of the pizza. It would have been an obvious matter of preference to sprinkle the cheese first or the flour first. One would have been motivated to sprinkle the flour first because flour is a powdery substance that would coat the baking pan to prevent sticking. The egg mixture goes on top of the cheese layer; it is not part of the cheese layer as argued by applicant.

Applicant's arguments filed 7/13/09 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

November 6, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794